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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,135	12/17/2001	Andreas Langsdorf	P/633-12	4726

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OSTROLENK FABER GERB & SOFFEN
1180 AVENUE OF THE AMERICAS
NEW YORK, NY 100368403

EXAMINER	
LOPEZ, CARLOS N	
ART UNIT	**PAPER NUMBER**
1731	

DATE MAILED: 07/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

VB

Office Action Summary	Application No.	Applicant(s)	
	10/023,135	LANGSDORF ET AL.	
	Examiner	Art Unit	
	Carlos Lopez	1731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 May 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *4 and 5* is/are allowed.

6)☒ Claim(s) *1-3 and 6-9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Response to Amendment

The amendment filed on 5/8/04 has been entered. The amendment obviates the objection made to the specification, objection to the drawings and the rejections of claims 1,2,6, and 8 made under §112 2nd paragraph. The newly added limitation of further defining the claimed device thru its intended use does not structurally distinguish it from the Di Candi reference. A prior art rejection of claims 1-3, and 6-9 is maintained as noted below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-3, and 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Di Candia (US 3,908,735). Di Candia discloses a membrane body made of porous material 103 having channels 104 for the introduction of compressed gas to flow through the porous material. The newly added intended use limitation, "to levitate the glass gobs above the gas outlet surface of the membrane body", is deemed to be a functional limitation capable of being performed by Di Candi. It is reasoned that if the porous membrane body as disclosed by Di Candi can be used to move molten steel as noted in col. 3, lines 13ff, it would be obvious to one of ordinary skill in the art at the time

the invention was made, that Di Candi's device is capable of levitating small glass gobs as claimed.

Furthermore is also noted that the fact that the claimed invention is for the use of levitating glass gobs in comparison to Di Candies' device, intended for the flow of steel, said intended use does not overcome the Di Candi reference because it does not further structurally distinguished it over Di Candi. It is also noted that the newly intended use limitation being addressed above is not to be considered as carrying patentable weight. Said discussion is only being made to further note on the record that the structural features of Di Candis' device is capable for other uses such as that claimed by applicant.

As for claim 3, channels 104 pass through the porous membrane body 103 and opens to the outlet surface of the porous material 103 and to the surface opposite the outlet surface as best shown in figure 3.

As for claim 2, as shown in figure 4, the channels 104 are at an acute angle to the outlet surface.

As for claim 6, the distance between the channel 104 and the outlet surface, which is deemed as the surface which the compressed air exits as best shown in figure 4, is less than half the thickness of the membrane body 103.

As for claim 8, the outlet channels are positioned at a position across the membrane body to provide compressed gas to the outlet surface.

As for claim 9, the outlet surface is a horizontal upper surface.

Response to Arguments

Applicant's arguments filed 5/18/04 have been fully considered but they are not persuasive. 5/18/04. Applicant argues that Di Candi's device does not relate to the formation of glass gob but instead to casting steel. Applicant also argues that Di Candi does not disclose "passage of compressed gas through pores of the membrane body to levitate the glass gobs above the gas outlet surface of the membrane body." Applicant's arguments are based on intended use limitations that do not further structurally limit the claimed device from that of a mold as disclosed by Di Candi.

A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

In the instant case, it is deemed that if a porous membrane having channels to permit compressed gas to pass through the pores therein can move molten steel it is reasonably to conclude that it can levitate smaller lighter glass gobs as applicant's intended use limitation notes. Applicant has not rebutted the prima facie case shown that Di Candi's device can levitate small glass gobs in view that it moves heavier objects such as molten steel.

Applicant also argues that the porous mold of Di Candi is not a reasonable interpretation of the term "membrane" but yet applicant fails to note what "membrane body" is or is not. MPEP 2101.01 notes, "While the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allow. This means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification." Applicant's specification does not define the term "membrane body" nor does the art use the term "membrane body". Hence the plain meaning of the word "membrane body" is being considered as claiming any body, or structure made of the claimed porous material having the claimed outlets and channels therein.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. References A-C in PTO-892 have been cited to show the state of the art.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carlos Lopez whose telephone number is 571.272.1193. The examiner can normally be reached on Mon.-Fri. 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven Griffin can be reached on 571.272.1189. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

STEVEN P. GRIFFIN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700

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